IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

Crl.MC.No. 2829 of 2007()

CC.189/2005 of JUDL.MAGISTRATE OF FIRST CLASS-I, KANJIRAPPALLY
CRIME NO.225/2002 OF KANJIRAPILLY POLICE STATION

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PETITIONER:

ZAKKIR HUSSAIN,
S/O.SAINULABIDEEL, AGED 42 YEARS,
FATHIMA MANZIL, PAZHAVANGADI, PATHANAMTHITTA.

BY ADV. SRI.T.N.SURESH
SRI.ROY THOMAS

RESPONDENTS:

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1. STATE OF KERALA, TO BE REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA ERNAKULAM.

2. CIRCLE INSPECTOR OF POLICE,
KANJIRAPILLY.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 12/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No. 2829 of 2007

Dated this the 12th day of September 2007

O R D E R

The petitioner is the tenth accused in a prosecution for offences punishable inter alia under Section 120(B), 420 and 465 I.P.C. Cognizance has been taken on the basis of the final report submitted by the police after due investigation. The petitioner prays that the proceedings in so far as it relates to him may be quashed.

2. In response to a specific query by this court, the learned counsel for the petitioner submits that the petitioner has already entered appearance before the learned Magistrate and has been enlarged on bail. Has the petitioner pleaded discharge? Has any order been passed under Section 239/240 Cr.P.C? The learned counsel for the petitioner submits that the plea of discharge and the question of framing charge have not been considered by the learned Magistrate so far. Why has the petitioner come to this court without and before staking his claim for discharge under Section 239/240 Cr.P.C? The only

submission is that there is no material against the petitioner. That plea, according to me, should normally be raised before the court concerned at the stage of Section 239/240 Cr.P.C. Not that this court does not have the jurisdictional competence in an appropriate case to consider the prayer for quashing of the proceedings by invoking the extraordinary inherent jurisdiction. That course cannot certainly be the daily routine. Compelling and satisfactory reasons must be shown to exist as to why the normal procedure prescribed under the code must be short circuited and this court must undertake the responsibility of going through the entire material to find out whether there is any sustainable allegation against the petitioner.

3. The mere fact that there is probability of discharge or acquittal at later stages cannot certainly persuade this court to invoke the powers under Section 482 Cr.P.C. Ordinarily and normally, the course prescribed under the code must be followed by a person who wants to claim premature termination of undeserved proceedings against him. Having considered all the relevant inputs, I do not find any such exceptional reasons which can weigh this court to choose to invoke the powers under

Section 482 Cr.P.C overlooking the normal procedure prescribed under the court.

4. This petition is in these circumstances dismissed. But I may hasten to observe that I have not decided to express any final opinion on merits. The petitioner's right to claim discharge shall remain unfettered. The learned Magistrate must consider the petitioner's claim for discharge at the stage of 239/240 Cr.P.C. I may also observe that unnecessary insistence on personal appearance of the petitioner should not be made until that plea of discharge is considered and appropriate decision taken.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007